DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850

Disabled & Elderly Health Programs Group

August 22, 2018

Bill Snyder
Director, Medical Services
South Dakota Department of Social Services
700 Governors Drive, Kneip Building
Pierre, SD 57501-2291

Dear Mr. Snyder:

In follow-up to the 6/2/17 initial approval granted to South Dakota's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided, work has continued within the state to bring settings into compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

As a reminder, in order to receive final approval, the STP should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);
- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

Prior to submitting the updated version of the STP for consideration of final approval, the state will need to issue the STP for a minimum 30-day public comment period. I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

Ralph F. Lollar, Director
Division of Long Term Services and Supports

ATTACHMENT

Additional CMS feedback on areas where improvement is needed by the state of South Dakota in order to receive final approval of the HCBS Statewide Transition Plan

PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Site-Specific Setting Assessment and Validation Process

CMS requests that the state provide the following information regarding the site-specific assessment process.

- ***Residential Settings Assessment & Validation Process:*** CMS reminds the state that all HCBS settings must be individually validated for compliance with the federal HCBS settings criteria independent of the provider self-assessments.
    - South Dakota deployed state personnel to conduct onsite reviews of all "assisted living and community service providers", which included all assisted living settings and a "random sample of group homes and supervised apartment settings across South Dakota's 19 Community Support Providers (CSP)". Please confirm whether the settings that did not receive an onsite review received an individual interview that was linked back to the specific setting for validation. If not, please describe what additional strategies the state is deploying to validate that the settings not receiving an onsite review or individual interview are fully compliant with the federal HCBS requirements.
    - During the onsite reviews, state personnel conducted interviews of a sample of HCBS beneficiaries at each of the settings, using a subset of the original 57 questions from the provider self-assessment and entering the interview results online. Please confirm (a) whether the questions reflected and covered each of the federal HCBS settings criteria; and (b) how the state addressed discrepancies discovered between individual HCBS beneficiary responses and information reported in the provider self-assessment.
    - In the state's evaluation of the provider self-assessment findings, state personnel analyzed all responses where a provider responded "Yes, with limits" to determine based on the information provided whether the limit was appropriate. The STP states, "Limits that undergo due process or implemented for the health and safety of the individual were determined to be acceptable and were coded as an optimal answer in the assessment results," (p. 40). CMS wishes to remind the state that settings are required to comply fully with all settings criteria unless a modification to one more criteria is based on a specific individually assessed need and outlined in an individual's person-centered plan (PCP). Please confirm that settings that reported compliance with one or more settings criteria on a limited basis demonstrated evidence that the only limitations were linked to modifications outlined in individual HCBS beneficiary PCPs.
- ***Non-Residential Settings Assessment & Validation Process:***
    - **Community, Hope, Opportunity, Independence, Careers, Empowerment, Success (CHOICES) Waiver HCBS (day habilitation, prevocational services,**

and supported employment): Please update the information provided on pages 46-47 with the results of the provider assessment and subsequent state validation activities related to this waiver to include—

- The number of each type of non-residential settings (day habilitation, prevocational services and group supported employment) currently in operation [as a reminder, all settings that group or cluster beneficiaries together for the purposes of receiving HCBS must be assessed and validated for compliance with the federal settings requirements];
- More details on the validation activities being pursued: whether the "state staff assessments" will be conducted for every setting; whether the individual interviews will include every HCBS beneficiary and who will support the beneficiary in participating in the interview.

- ***Final Reporting of Aggregated Validated Results:*** Please include an update of the aggregated results of setting compliance (by setting type/category) in the STP identifying if the settings fully comply; are not currently in full compliance but could comply with modification; are settings presumed to have the qualities of an institution; or are not able to come into compliance.

- ***Individual, Privately-Owned Homes:*** The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings criteria if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do to monitor compliance of this category of settings with the regulatory criteria over time. CMS requests that Utah provide additional details about its strategy for compliance monitoring of these settings. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS services to the individual), are considered provider-owned or -controlled settings and should be evaluated as such.

Setting Remediation Strategies

Please address the following requests related to systemic and setting remediation in the updated STP:

- Please clarify if the remediation plans and process outlined on pg. 44 will also be used for day habilitation, prevocational, and supported employment settings that need modifications.

- ***Non-Disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to increase access to non-disability specific setting options across home and community-based services.

- According to the STP, the state anticipates that all enrolled settings will be able to comply with the federal HCBS requirements. However, if a provider closes or it is determined by the state that a setting will not be able to meet the home and community-based settings requirements, the state will provide options for individuals that prioritize other home and community-based services available in the community. If no additional HCBS setting options are available in the beneficiary's locality, the state explains that "options for HCB services in other communities will be discussed with the individual," and "relocation may also include intermediate care facilities or skilled nursing facilities when an individual meets the level of care requirements" (p. 45). For settings that do not fully meet the home and community-based settings criteria, please include details in the STP regarding site-specific remediation, including the types of technical assistance the state is providing to providers to help them come into compliance with the federal settings rule. For those settings that are not able to be brought into compliance, please provide a detailed plan the state will use for communicating and assisting beneficiaries currently receiving services in settings that are determined not to be able to come into compliance prior to the end of the transition period that includes:
    - A description for how participants will be offered informed choice and assistance in locating a new residential or nonresidential setting in which HCBS are provided or accessing alternative funding streams.
    - An estimated number of beneficiaries who are in settings that the state anticipates will not be in compliance by the end of the transition period and may need to access alternative funding streams or receive assistance in locating a compliant setting.
    - Confirmation of the state's timeline for supporting beneficiaries in exploring and securing alternative options should a transition out of a non-compliant setting be necessary.
    - An explanation of how the state will ensure that needed services and supports are in place in advance of the individual's transition.

Monitoring of Settings

- On page 44, the STP states that "South Dakota will incorporate assessment of state and federal expectations into annual onsite reviews beginning in 2017". Please expand on this statement to confirm that all settings will receive annual onsite visits that include questions related to monitoring of ongoing compliance with the HCBS settings criteria.
- Please identify the specific federal home and community-based requirements the state is planning to monitor through each of the Systemic Monitoring and Reporting (SMART), National Core Indicators (NCI), and Council on Quality and Leadership (CQL) quality indicators identified on pp. 48-61.
- Explain whether and how SMART, NCI, and CQL data will be linked to individual settings in order to monitor the compliance of each setting.

Heightened Scrutiny

As a reminder, the state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on a presumptively institutional setting, the presumption will stand and the state must describe the process for communicating with the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal HCBS rule. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at http://www.medicaid.gov/HCBS.

Milestones

CMS will send to the state an updated milestone chart reflecting anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, relocation and ongoing monitoring of compliance that have been gleaned from the STP. The state should review the milestone chart and return to CMS within 30 days of receiving the template.